

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to Investigate the)
Implementation of Feed-in Tariffs.)
)
_____)

DOCKET NO. 2008-0273

PUBLIC UTILITIES
COMMISSION

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FILED

**ALEXANDER & BALDWIN, INC. through its division
HAWAIIAN COMMERCIAL & SUGAR COMPANY'S
MOTION TO INTERVENE,**

VERIFICATION AND CERTIFICATE OF SERVICE

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ALEXANDER & BALDWIN, INC.
through its division, HAWAIIAN
COMMERCIAL & SUGAR COMPANY

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ALEXANDER & BALDWIN, INC. through its division
HAWAIIAN COMMERCIAL & SUGAR COMPANY'S MOTION TO INTERVENE

TO THE HONORABLE PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII:

MOVANT, ALEXANDER & BALDWIN, INC., through its division, HAWAIIAN COMMERCIAL & SUGAR COMPANY, a Hawaii corporation (the "Movant") hereby moves the Hawaii Public Utilities Commission (the "Commission") for an order allowing Movant to intervene as a party, pursuant to Hawaii Revised Statutes § 269-6 and §§ 6-61-41 and 6-61-55 of the Rules of Practice and Procedure before the Public Utilities Commission, Chapter 61 of Title 6 of the Hawaii Administrative Rules ("HAR").

Movant's substantial interests in this Docket are unique and will not be fully and adequately represented unless Movant is allowed to intervene on its own behalf. In addition, Movant as a non-fossil fuel generator that has provided Maui Electric Company, Limited ("MECO") with firm renewable energy since 1980 and who serves as a member of the Hawaii Clean Energy Initiative working groups, has the experience and background to greatly assist the Commission in developing a sound and accurate evidentiary record, thereby ensuring that the resulting decision is just and reasonable, and meets the objectives of the comprehensive

agreement entered into by the Governor of the State of Hawaii, the State of Hawaii Department of Business, Economic Development and Tourism, the State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs and the Hawaiian Electric Companies on October 20, 2008 (the "Comprehensive Agreement").¹ In support of this Motion, Movant states as follows:

1. Procedural History of this Docket.

The Commission initiated this docket by Order on October 24, 2008 to address the issues related to implementation of feed-in tariffs in the HECO Companies' service territories.² In the Order, the Commission named the HECO Companies and the Consumer Advocate as parties to the proceeding and invited any interested individual, entity, agency, or community or business organization to file a motion to intervene or participate without intervention in the Docket pursuant to HAR Chapter 6-61.³

It is Movant's understanding that no action has commenced in this Docket and that Movant is within the 20-day time period to file a Motion to Intervene pursuant to HAR § 6-61-57(2).

2. Movant. Movant is a division of Alexander & Baldwin, Inc. Alexander & Baldwin, Inc. is a Hawaii corporation authorized to transact business within the State of Hawaii. Movant's full name and business address is as follows:

Hawaiian Commercial & Sugar Company
P.O. Box 266
Puunene, Maui, Hawaii 96784

¹ See, Order Initiating Investigation in Docket No. 2008-0273. "Hawaii Electric Companies" or "HECO Companies" collectively refer to Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc.

² Id.

³ Id.

All correspondence related to this Docket should be sent to:

MR. FRANK E. KIGER
Plantation General Manager
Hawaiian Commercial & Sugar Company
P.O. Box 266
Puunene, Maui, Hawaii 96784

SANDRA-ANN Y.H. WONG
Attorney at Law, A Law Corporation
1050 Bishop Street, #514
Honolulu, Hawaii 96813

and

NELSON N.S. CHUN, ESQ.
JAMES T. MIYASHIRO, JR., ESQ.
Alexander & Baldwin, Inc.
P.O. Box 3440
Honolulu, Hawaii 96801-3440

3. Nature of Movant's Rights.

The Commission in initiating this investigation has invited any interested individual, entity, agency, or community or business organization to file a motion to intervene or participate without intervention in this Docket. Movant is a non-fossil fuel generator that has provided MECO with firm renewable energy since 1980 and is, pursuant to an Amended and Restated Power Purchase Agreement between A & B – Hawaii, Inc. (predecessor to Alexander & Baldwin, Inc.) through its division HC&S, and MECO, dated November 30, 1989 (“PPA”), obligated to continue to do so until 2014. Thus, Movant qualifies as an entity that may intervene in this Docket.

4. Nature and Extent of Movant's Property, Financial, or Other Interest.

Movant is a non-fossil fuel generator that has provided MECO with firm renewable energy since 1980 and is, pursuant to the PPA, obligated to continue to do so until 2014.

Movant provides MECO with eight (8) to twelve (12) megawatts ("MW") of firm capacity renewable energy per contract year.⁴ Movant is currently paid both an energy and capacity charge for the power it provides to MECO.⁵

Movant's energy charge is based upon MECO's Avoided Energy Costs per net kilowatt hour for On-Peak and Off-Peak hours for each calendar month and filed with the Commission quarterly by MECO.⁶ The PPA also states, inter alia:

... for purposes of this Agreement, Avoided Energy Costs shall, in any event, include all of the cost factors allowed as of the Effective Date by the PUC or included in MECO's calculation of Avoided Energy Costs (including avoided fuel costs and avoided operating and maintenance costs) in addition to any such additional factors which thereafter may be allowed; and provided, further, that if any such factors allowed by the PUC or included in MECO's calculations of Avoided Energy Costs as of the Effective Date are thereafter omitted from MECO's calculations or quarterly PUC filings, then such factors shall be added to MECO's calculation of Avoided Energy Costs for purposes of computing Avoided Energy Costs under this Agreement or shall be added to the applicable capacity charge payable under this Agreement, notwithstanding that recovery of such factors may not then be allowed by the PUC.⁷

Pursuant to the PPA, Movant's capacity charge to provide MECO with Firm Capacity and System Protection Capacity is \$1,790,880.00 per contract year.⁸

The amount of the energy charge and the capacity charge provided under the terms of the PPA allow Movant to operate in an economically viable manner. The majority of Hawaii's sugar plantations have failed and closed within the past few decades and the ability of Movant to

⁴ Pursuant to the Amended and Restated Power Purchase Agreement between A & B – Hawaii, Inc. (predecessor to Alexander & Baldwin, Inc.) through its division HC&S and MECO, dated November 30, 1989 ("PPA"), Movant and MECO may mutually agree to increase the amount of Firm Capacity offered to MECO. See PPA at 10, Optional Additional Capacity.

⁵ Id. at 14-18. The PPA was approved by the Commission in D&O 10803 in Docket No. 6616: In the Matter of the Application of Maui Electric Company, Ltd. for Approval to Recover the Purchased Energy and Firm Capacity Costs of its Amended and Restated Power Purchase Contract with A&B-Hawaii, Inc., through its division, Hawaiian Commercial & Sugar Company, in its Maui Division Rates, filed on October 11, 1990.

⁶ Id. at 15.

⁷ Id.

⁸ See First Amendment to Amended and Restated Power Purchase Agreement between A & B – Hawaii, Inc. (predecessor to Alexander & Baldwin, Inc.) through its division HC&S and MECO, dated November 1, 1990 at 2. The capacity charge is subject to adjustments as described in the PPA.

continue to provide firm capacity renewable electrical energy, agricultural products, and employment in Maui depends on operating under the certainty provided by contractual agreements reached in the PPA, and an opportunity to be heard when government agencies take actions that may adversely impact its property and financial rights.

The instant Docket may affect Movant's property and financial rights because this investigative proceeding is intended to:

... determine the best design for feed-in tariffs that support the Hawaii Clean Energy Initiative, considering such factors as categories of renewables, sizes or locational limits for projects qualifying for the feed-in tariff, how to manage and identify project development milestones relative to the queue of projects wishing to take the feed-in tariff terms, what annual limits should apply to the amount of renewables allowed to take the feed-in tariff terms, what factors to incorporate into the prices set for feed-in tariff payments, and the terms, conditions, and duration of the feed-in tariff that shall be offered to all qualifying renewable projects. . . .⁹

Thus, Movant should be granted intervention to protect its property and financial rights.

5. The Effect of the Pending Order as to Movant's Interest.

If the Commission concludes that Movant is subject to feed-in tariffs, it may affect the amount that it is paid for its Energy and Capacity to MECO. If the rates are decreased and Movant incurs a loss, given the other challenges that face Movant, such a decrease could force it into a position that would severely affect it, MECO, and the greater Maui community.

6. Other Means Available Whereby Movant's Interests May be Protected.

Movant has no other means but intervention to protect its unique property and financial interests and to ensure that its energy and capacity charges, which were contractually bargained for between itself and MECO, are protected. To not grant Movant's Motion to Intervene would

⁹ See, Order Initiating Investigation, filed on October 24, 2008, in Docket No. 2008-0273: In the Matter of Public Utilities Commission Instituting a Proceeding to Investigate the Implementation of Feed-in Tariffs at 3.

deny it of its due process rights and may adversely affect its contractual rights under its PPA with MECO.

7. Extent to Which Movant's Interests Would be Represented by Existing Parties.

The Movant's interests cannot be fully represented by any of the existing parties in the Docket because none of those parties share the same property and financial interests as Movant. Neither the HECO Companies nor the Consumer Advocate currently has a PPA to provide power to a regulated utility at a set price. Also neither the HECO Companies nor the Consumer Advocate would be the recipients of feed-in tariff payments. Finally, neither the HECO Companies nor the Consumer Advocate share Movant's strong interest in protecting its rights under the PPA that enable it to continue to provide firm capacity renewable electrical energy, agricultural products, and employment in Maui.

8. Movant's Intervention Will Assist in the Development of a Sound Evidentiary Record.

Movant, as a non-fossil fuel generator that has provided MECO with firm renewable energy since 1980 and has served as a member of the Hawaii Clean Energy Initiative working groups, has the experience and background to greatly assist the Commission in developing a sound and accurate evidentiary record, thereby ensuring that the resulting decisions are just and reasonable, and meets the objectives of the Comprehensive Agreement.

9. Extent to Which the Movant's Intervention Would Broaden the Issues or Delay the Proceedings.

Movant's intervention will not unduly broaden the issues or unduly delay the proceedings. Rather given Movant's unique position of providing MECO with firm renewable energy since 1980, serving as a member of the Hawaii Clean Energy Initiative working groups, and its long history in and commitment to the Maui community Movant, as an active

Intervenor, will be able to assist the Commission in ensuring that decisions are timely, and justly and reasonably made. Movant seeks to ensure that a comprehensive examination of the issues involved in this Docket is made and meets the objectives of the comprehensive and the historic Comprehensive Agreement.

10. Movant's Interest Compared to the General Public.

The Movant has unique property and financial interests and an intimate knowledge of being a non-fossil fuel provider of firm renewable energy to MECO since 1980 under a PPA that is not shared by the general public.

11. Movant's Position.

The Movant as a non-fossil fuel provider with a PPA with MECO has vested rights to be provided with Avoided Energy Costs and Avoided Capacity Costs as calculated and agreed upon with MECO, and approved by the Commission in 1990 and is obligated, pursuant to its PPA, to provide specific quantities of firm capacity and renewable electrical energy to MECO for at least the next two years. Thus, Movant has property and financial rights that make it vital that it be a party in this Docket. The ability of Movant to continue to provide firm capacity renewable electrical energy, agricultural products, and employment in Maui depends on operating under the certainty provided by the agreed upon rates and terms in the PPA, and an opportunity to be heard when government agencies take actions that may adversely impact its property and financial rights. Thus, it is vital that Movant be allowed to intervene as a party in this Docket.

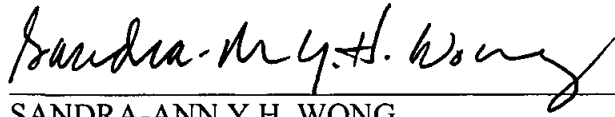
Alternatively, if the Commission is not inclined to grant Movant intervenor status, Movant respectfully moves the Commission to at least grant it Participant status and permit it to submit Position Statements and/or Testimony.

Movant does not request a hearing on this Motion.

VI. CONCLUSION

WHEREFORE, Movant respectfully moves the Commission to grant its Motion to Intervene, or, alternatively, to grant it Participant status and permit it to submit Position Statements and/or Testimony.

DATED: Honolulu, Hawaii, November 13, 2008.


SANDRA-ANN Y.H. WONG

Attorney for Movant
Alexander & Baldwin, Inc. through its division
Hawaiian Commercial & Sugar Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was duly served on each of the following parties via hand delivery or United States Mail, postage prepaid, as set forth below:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
335 Merchant Street
Room 326
Honolulu, Hawaii 96813

(Via hand-delivery)
(2 Copies)

DARCY L. ENDO-OMOTO
VICE PRESIDENT
GOVERNMENT AND COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P.O. Box 2750
Honolulu, HI 96840-0001

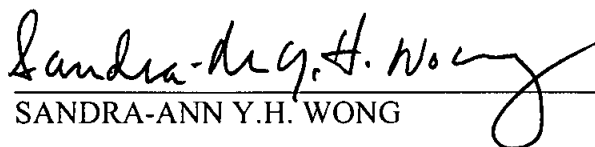
DEAN MATSUURA
MANAGER
REGULATORY AFFAIRS
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Honolulu, HI 96840-0001

JAY IGNACIO
PRESIDENT
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P.O. Box 1027
Hilo, HI 96721-1027

EDWARD L. REINHARDT
PRESIDENT
MAUI ELECTRIC COMPANY, LTD.
P.O. Box 398
Kahului, Maui, HI 96732

RANDALL J. HEE, P.E.
President and Chief Executive Officer
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1
Lihue, Kauai, HI 96766-2000

DATED: Honolulu, Hawaii, November 13, 2008.


SANDRA-ANN Y.H. WONG

Attorney for Movant
Alexander & Baldwin, Inc. through its division
Hawaiian Commercial & Sugar Company

VERIFICATION


STATE OF HAWAII

COUNTY OF MAUI

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SS.

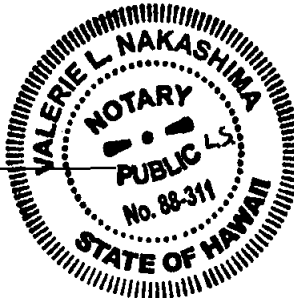
Frank E. Kiger, being first duly sworn, deposes and says: I am the Plantation Manager of Hawaiian Commercial & Sugar; that I have read the foregoing Motion to Intervene and that the same are true and correct to the best of my knowledge and that I have the authority to sign on behalf of Alexander & Baldwin, Inc. through its division Hawaiian Commercial and Sugar.


FRANK E. KIGER

Subscribed and sworn to before me
this 10th day of November, 2008



Valerie L. Nakashima
Notary Public, State of Hawaii
My commission expires: 5/25/2012



Doc. Date: 11/10/08 # Pages: 12
Valerie L. Nakashima Second Circuit
Doc. Description
Puc Motion to Intervene

 11/10/08
Notary Signature Date

NOTARY CERTIFICATION